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HAROLD B. WILLEY,

NO. 882

In the Supreme Court
of the United States

OCTOBER TERM, 1955

GLADYS LAYCOCK,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

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NO.....

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vs.

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Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

Gladys Laycock prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Ninth Circuit, entered in the above-entitled case on March 6, 1956.

Citations to Opinions Below

The memorandum opinion of the District Court (R. 12) is unreported. The opinion of the Court of Appeals,

printed in Appendix A hereto, infra, p. 8, is not yet reported.

Jurisdiction

The judgment of the Court of Appeals was entered on March 6, 1956 (Appendix A, p. 8, infra). The jurisdiction of this Court is invoked under 28 U.S.C., Sec. 1254(1).

Questions Presented

1. Whether the Act of August 27, 1935, withdrew the jurisdiction previously given by the Tucker Act to sue the Government on a claim for property taken without due process of law.

2. Whether the Gold Reserve Act, Trading with the Enemy Act, and the Gold Regulations promulgated thereunder setting a mandatory price for a property owner's product without a hearing and under threat of criminal penalties are constitutional and valid.

3. Whether the Gold Regulations allowing the Government to sell gold to industry at a fixed price are in violation of plaintiff's constitutional right to sell lawful property to users thereof.

4. Whether the virtual destruction of a legitimate industry in the United States by governmental action is constitutional and valid.

5. Whether plaintiff's complaint states a claim upon which relief could be granted under the Tucker Act.

Constitutional Provision Involved

Fifth Amendment, Constitution, printed in Appendix B, infra, p. 14.

Statutes Involved

The statutory provisions involved are as follows and their petinent texts are set forth in Appendix B:

1. Tucker Act, 28 U.S.C., Sec. 1346(a)(2), infra, p. 14.

2. Act of August 27, 1935, 49 Stat. 938, 939; 31 U.S.C., Sec. 773(b), infra, p. 14.

3. Gold Reserve Act of 1934, 48 Stat. 340, infra, pp. 14, 15.

4. Trading with the Enemy Act, 48 Stat. 1, infra, p. 15.

Regulations Involved

Gold Regulations, 19 F.R. 4309-4316, Appendix C, infra, p. 16.

Statement

Plaintiff, a substantial owner of a gold mine, filed her complaint on November 10, 1954 (R. 3). The jurisdiction of the District Court was invoked under the Tucker Act (infra, p. 14) and founded upon the Constitution in that plaintiff was being deprived of her property without due process of law. This was so because the Executive Department of Government had

enforced a 1934 price for her product which prevented her from mining gold because she couldn't make a profit thereon with present-day costs. The Government moved to dismiss the complaint on the grounds that:

1. The action was barred by the statute of limitations;

2. The complaint failed to state a claim upon which relief could be granted; and

3. The Court did not have jurisdiction (R. 10).

The District Court dismissed the complaint, filing a memorandum opinion holding that plaintiff's property had not been taken for the reason that the Government had not acquired possession of the gold (R. 12). The Circuit Court modified the District Court's order and affirmed, holding that the court was without jurisdiction because the consent to sue the Government had been withdrawn (Appendix A, infra, p. 8). Prior to the Court of Appeals' ruling the Court of Claims held in the *Central Eureka* case that a taking had occurred because plaintiff's right to operate its mine had been destroyed by order and the right to mine gold was a property right for which just compensation is due under the Fifth Amendment (cf. *Central Eureka Mining Co. v. U. S.*, F. Supp....., Ct. Cls. No. 49468, Feb. 20, 1956).

Reasons for Granting the Writ

1. Once jurisdiction to sue the Government is granted, a citizen is entitled to have the Supreme Court of the United States issue a ruling as to that jurisdiction

when in dispute. It is an extremely serious matter for the federal courts to tell a citizen that his private property is being taken from him by the Government without due process of law, but that the courts are powerless to help him in protecting his constitutional rights. If plaintiff can't have a hearing under the circumstances of her case, then, at the very least, she is entitled to have the Supreme Court close the door and tell her why she can't settle a legitimate grievance in court under the broad jurisdictional grant of the Tucker Act.

2. Once jurisdiction to sue the Government has been granted a citizen, any limitation thereon must be strictly construed. Only compelling language will be construed as withdrawing the privilege of suit against the Government granted in recognition of an obligation imposed by the Constitution. *Becker Steel Co. v. Cummings*, 296 U.S. 74, 80. A strict construction of the Act of August 27, 1935 (Appendix B, infra, p. 14) leads to the conclusion that it was not intended to apply to plaintiff's case. Plaintiff has the constitutional right to make use of her property by mining gold at her own economic risk. Her gold is still in the ground in Grant County, Oregon. It has not yet been "surrendered," "requisitioned," "seized" or "acquired" by the Government. The statute obviously applied to gold *in existence* prior to the time when the Act went into effect and was simply intended to prevent any further "gold clause" cases. Plaintiff's claim doesn't involve gold clauses in contracts and doesn't involve "the effect or validity of any change in the metallic content of the dollar or other regulation of the value of

money." Both conditions of the statute *must be met* before it takes effect in limiting the Tucker Act. Plaintiff merely asks for enough paper currency for her product so that she can get her mine into operation, thereby exercising her right to mine gold profitably if she can, through her own private initiative. The ruling of the Court of Appeals is clearly wrong.

3. The District Court was of the opinion that plaintiff's property had not been "taken" but rather "her damages are individual and consequential, resulting from the Government's monetary and gold regulations. . . ." (R. 13) The Court of Claims has held that the right to mine gold is a compensable property right (cf. *Central Eureka Mining Co. v. U. S.*, F. Supp. , Ct. Cls. No. 49468, Feb. 20, 1956). The Court of Claims is now in the process of assessing damages for Central Eureka Mining Co., the case arising out of the gold closing order during the war. Plaintiff cannot see any difference between an enforced closing by order and an enforced closing by a license requirement fixing a price for her product too low for her to operate at a profit. The District Court tells her that her damages are indirect and the Court of Appeals tells her she can't air her grievance in any event because the Court has no jurisdiction. The conflict should be resolved by this Court.

4. Plaintiff represents an old and honorable industry in the United States and Alaska which has been almost completely destroyed. For example, in 1940 there were over 18,000 operating gold mines in California alone.

Today there are less than 200. In 1940 there were over 400 operating gold mines in Oregon. Today there are less than a dozen. In all the eleven western states and Alaska tens of thousands of gold properties are lying dormant because their owners can't make a profit at a price fixed by the Executive Department of Government without a judicial hearing. These property owners representing hundreds of millions of dollars worth of value are entitled to have this Court speak.

Conclusion

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

NORMAN L. EASLEY and
STEWART M. WHIPPLE,
Counsel for Petitioner.

Date: April 16, 1956.

Appendix A

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

GLADYS LAYCOCK, *Appellant*,	)	
vs.	)	No. 14,858
	)	Mar. 6, 1956
UNITED STATES OF AMERICA, *Appellee*.	)	

Appeal from the United States District Court for the District of Oregon.

Before: POPE and LEMMON, Circuit Judges, and MATHES, District Judge.

MATHES, District Judge:

This is an appeal from an order dismissing appellant's action for damages alleged to have been sustained as a proximate result of enforcement of the statutes and regulations relating to the sale of gold. [See: Gold Reserve Act of 1934 (48 Stat. 337, 31 U.S.C. § 440); 12 U.S.C. §§ 95(a), 213; Executive Order 6260, as amended, 12 U.S.C.A. fol. § 95(a); United States Treasury Department Gold Regulations, 31 CFR, Part 54, §§54.1-55.2, 19 F.R. 4309-4316 (1954).]

Stated in summary, the allegations of appellant's complaint are: that she is a substantial owner of certain patented lode mining claims in Grant County, Oregon; that "in the past said mine has been greatly developed and large quantities of gold have been extracted therefrom"; that "at present approximately 243,000 tons of

ore are blocked out therein, but said ore cannot be economically processed at the present arbitrary price set for gold"; that the Government has fixed "an arbitrary and artificial price of 35 irredeemable and inconvertible paper dollars per troy ounce of fine gold as the authorized price for the purchase and sale of gold"; that "in the free markets of the world the price of fine gold has been and now is greatly in excess of $35.00 per troy ounce."

Appellant further alleges that the statutes and regulations requiring that gold recovered from natural deposits in the United States be sold to a Government mint at $35.00 per ounce, less mint charges, deprive appellant of her property "without due process of law and without just compensation in violation of the Fifth Amendment to the Federal Constitution in that they allow condemnation and acquisition of gold at a price other than the fair value"; that "during the last two years" these statutes and regulations have prevented appellant "from charging a price for her gold sufficient to render the operation of her mine economically feasible", and have caused appellant's gold mine "to depreciate in value and to remain closed", and have "directly and proximately resulted in a loss of profits to her and a depreciation in value of her said property in excess of $10,000, all to her damage in said sum."

The Government moved to dismiss on three grounds: (1) that the complaint "fails to allege facts sufficient to establish jurisdiction . . . over the . . . United States of America" [Fed. Rules Civ. Proc., Rule 12(b)(2), 28

U.S.C.A.]; (2) that the action is barred by the six-year period of limitations specified in 28 U.S.C. § 2401(a); and (3) that the complaint "fails to state a claim or cause of action upon which relief can be granted." [Fed. Rules Civ. Proc., Rule 12(b)(6).]

Appellant invoked the jurisdiction of the District Court under the Tucker Act [28 U.S.C. § 1346(a)(2)], contending that Government action under the gold program amounts to a "taking" of appellants' property for which "just compensation" is due under the Fifth Amendment. [Cf. *Central Eureka Mining Co. v. United States,* ..... F.Supp. ..... (Ct. Cls., No. 49468, Feb. 20, 1956).]

The United States of America, as sovereign, has consented to be sued under the Tucker Act [28 U.S.C. § 1346(a)(2)], says appellant, in cases "where private property is taken . . . in the exercise of its power of eminent domain, but without condemnation proceedings." [*Jacobs v. United States,* 290 U.S. 13 (1933); *United States v. Great Falls Mfg. Co.,* 112 U.S. 645 (1884).]

True, but such consent is limited to cases where the alleged taking is lawfully authorized and the claimed damages proximately result from an exercise of the power of eminent domain. [*United States v. North American Co.,* 253 U.S. 330 (1920); *Hamilton v. Kentucky Distilleries Co.,* 251 U.S. 146 (1919); *Legal Tender Cases,* 79 U.S. (12 Wall.) 457, 551 (1870).]

Upon dismissing appellant's action for want of jurisdiction, the District Court expressed the view that the complaint did not present a case of a taking of property within the purview of the Fifth Amendment.

We do not reach that question, being of the opinion that consent previously given in the Tucker Act or otherwise to sue the Government on a claim such as asserted by appellant here was expressly withdrawn by the Act of August 27, 1935. [49 Stat. 938, 939, 31 U.S.C. § 773(b).] This Act provides that: "Any consent which the United States may have given to the assertion against it of any right . . . in any proceeding of any nature whatsoever . . . upon any claim or demand arising out of any surrender, requisition, seizure, or acquisition of any . . . gold . . . and involving the effect or validity of any . . . regulation of the value of money, is withdrawn. . . ."

It appears to us beyond question that in the complaint at bar appellant asserts a claim or cause of action arising out of an alleged "surrender, requisition, seizure, or acquisition" by the Government of appellant's gold, and "involving the effect or validity of . . . regulation[s] of the value of money."

It is axiomatic that: "Consent alone gives jurisdiction to adjudge against a sovereign." [*United States v. United States Fidelity Co.*, 309 U.S. 506, 514 (1940).] This is so, even in cases grounded upon alleged violations by the Government of Federal Constitutional rights. [*Schillinger v. United States*, 155 U.S. 163, 168

(1894).] And it is equally well settled that "the power to withdraw the privilege of suing the United States or its instrumentalities knows no limitations." [*Maricopa County v. Valley Bank*, 318 U.S. 357, 362 (1943).]

The order of the District Court is modified to dismiss the action for lack of jurisdiction [Fed. Rules Civ. Proc., Rules 12(b)(2) and 41(b)]; and as so modified the order is affirmed.

(Endorsed:) Opinion. Filed Mar. 6, 1956.
Paul P. O'Brien, Clerk.

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

GLADYS LAYCOCK, *Appellant*,	)	
vs.	)	No. 14,858.
UNITED STATES OF AMERICA, *Appellee*.	)	

JUDGMENT

Appeal from the United States District Court for the District of Oregon.

This cause came on to be heard on the Transcript of the Record from the United States District Court for the District of Oregon, and was duly submitted.

On consideration whereof, It is now here ordered and adjudged by this Court, that the order of the said District Court in this cause be, and hereby is modified

to dismiss the action for lack of jurisdiction (Fed. Rules Civ. Proc., Rules 12(b)(2) and 41(b)); and as so modified be, and hereby is affirmed.

(ENDORSED) Judgment
Filed and Entered: March 6, 1956
PAUL P. O'BRIEN, Clerk.

Appendix B

The Fifth Amendment to the Constitution of the United States reads as follows:

> "No person shall * * * be deprived of life, liberty or property without due process of law; nor shall private property be taken for public use, without just compensation."

The Act of August 27, 1935, provides that:

> "Any consent which the United States may have given to the assertion against it of any right, privilege, or power whether by way of suit, counterclaim, set-off, recoupment, or other affirmative action * * * in any proceeding of any nature whatsoever * * * (3) upon any claim or demand arising out of any surrender, requisition, seizure, or acquisition * * * of any gold or silver and involving the effect or validity of any change in the metallic content of the dollar or other regulation of the value of money, is withdrawn * * *. (49 Stat. 938, 939)

The Tucker Act provides as follows:

> "The District Courts shall have original jurisdiction, concurrent with the Court of Claims, of:
>
> (2) Any other civil action or claim against the United States, not exceeding $10,000 in amount, founded either upon the Constitution, or any Act of Congress, or any regulation of an executive department, or upon any express or implied contract with the United States, or for liquidated or unliquidated damages in cases not sounding in tort." (28 U.S.C. Sec. 1346(a)(2))

The pertinent provision of the Gold Reserve Act of 1934 reads as follows:

"The Secretary of the Treasury shall, by regulations issued hereunder, with the approval of the President, prescribe the conditions under which gold may be acquired and held, transported, melted or treated, imported, exported, or earmarked: (a) for industrial, professional and artistic use; (b) by the Federal Reserve banks for the purpose of settling international balances; and (c) for such other purposes as in his judgment are not inconsistent with the purposes of sections 315b, 405b, 408a, 408b, 440-446, 752, 754a, 754b, 767, 821, 822a, 822b, and 824 of this title and sections 213, 411, 415, 417 and 467 of Title 12. Gold in any form may be acquired, transported, melted or treated, imported, exported, or earmarked or held in custody for foreign or domestic account (except on behalf of the United States) only to the extent permitted by, and subject to the conditions prescribed in, or pursuant to, such regulations. Such regulations may exempt from the provisions of this section, in whole or in part, gold situated in places beyond the limits of the continental United States." (48 Stat. 340)

The pertinent provisions of the Trading with the Enemy Act are as follows:

"(1) During the time of war or during any other period of national emergency declared by the President, the President may, through any agency that he may designate, or otherwise, and under such rules and regulations as he may prescribe, by means of instructions, licenses, or otherwise—

(A) investigate, regulate, or prohibit any transactions in foreign exchange, transfers of credit or payments between, by, through, or to any banking institution, and the importing, exporting, hoarding, melting, or earmarking of gold or silver coin or bullion, currency or securities." (48 Stat. 1)

Appendix C

The pertinent sections of the Treasury Gold Regulations read as follows:

"§ 54.12 *Conditions under which gold may be acquired, held, melted, etc.* Gold in any form may be acquired, held, transported, melted or treated, imported, exported, or earmarked only to the extent permitted by and subject to the conditions prescribed in the regulations in this part or licenses issued thereunder."

"§ 54.44 *Purchase price.* The mints shall pay for all gold purchased by them in accordance with this subpart $35.00 (less one-fourth of 1 percent) per troy ounce of fine gold, but shall retain from such purchase price an amount equal to all mint charges. This price may be changed by the Secretary of the Treasury without notice other than by notice of such change mailed or telegraphed to the mints."

"§ 54.52 *Sale price.* The mints shall charge for all gold sold under this article $35.00 (plus one-fourth of 1 percent) per troy ounce of fine gold plus the regular mint charges. This price may be changed by the Secretary of the Treasury without notice other than by notice of such change mailed or telegraphed to the mints."

(19 R.F. 4309-4316)

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In the Supreme Court of the United States

OCTOBER TERM, 1955

No. 882

GLADYS LAYCOCK, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals is not yet reported (Pet. App. 8-13; R. 21-24). A memorandum opinion of the district court (R. 12-14), has not been reported.

JURISDICTION

The judgment of the court of appeals was entered on March 6, 1956 (Pet. App. 12-13; R. 25). Petition for a writ of certiorari was filed on April 19, 1956. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

Whether, in the face of the Act of August 27, 1935, c. 780, sec. 2, 49 Stat. 938, 939, 31 U.S.C. 773(b), by which Congress expressly withdrew any consent to suit against the United States "upon any claim or demand arising out of any surrender, requisition, seizure, or acquisition * * * of any gold or silver and involving the effect or validity of any change in the metallic content of the dollar or other regulation of the value of money," petitioner's complaint alleged facts sufficient to establish jurisdiction over this attempted suit against the United States.

STATUTES INVOLVED

1. The Act of August 27, 1935, sec. 2, 49 Stat. 938, 939, 31 U.S.C. 773(b), provides as follows:

> Sec. 2. Any consent which the United States may have given to the assertion against it of any right, privilege, or power whether by way of suit, counterclaim, set-off, recoupment, or other affirmative action or defense in its own name or in the name of any of its officers, agents, agencies, or instrumentalities in any proceeding of any nature whatsoever (1) upon any gold-clause securities of the United States or for interest thereon, or (2) upon any coin or currency of the United States, or (3) upon any claim or demand arising out of any surrender, requisition, seizure, or acquisition of any such coin or currency or of any gold or silver and involving the effect or validity of any change

> in the metallic content of the dollar or other regulation of the value of money, is withdrawn: *Provided*, That this section shall not apply to any suit heretofore commenced or which may be commenced by January 1, 1936, or to any proceeding referred to in this section in which no claim is made for payment or credit in an amount in excess of the face or nominal value in dollars of the securities, coins or currencies of the United States involved in such proceeding.

2. 28 U.S.C. 2401(a) provides in pertinent part as follows:

> Every civil action commenced against the United States shall be barred unless the complaint is filed within six years after the right of action first accrues. * * *

STATEMENT

Petitioner commenced this action on November 10, 1954, by the filing of a complaint which sought to invoke the jurisdiction of the district court under the Tucker Act, 28 U.S.C. 1346(a)(2). The complaint alleges that certain statutes enacted by the Congress in 1917, 1933 and 1934 and certain executive orders and administrative regulations issued pursuant thereto, all generally relating to transactions in gold, are invalid and unconstitutional (R. 3-10). The complaint states further that these allegedly invalid statutes, executive orders and regulations prevented petitioner from making

lawful use of her property, a gold mine; directly interfered with her right to own and enjoy the use of private property; and deprived her of her property without due process of law and without just compensation (R. 6-10). This claim was based on the allegation that the cost of operating a gold mine had increased to a point where it was in excess of the fixed $35.00 per troy ounce price paid for gold, and not on any physical appropriation of property. See particularly paragraph VIII of petitioner's complaint (R. 6-7). Recovery of $10,000.00 was sought (R. 10).

The United States moved to dismiss the complaint on the grounds (1) that the complaint showed on its face that the acts constituting the alleged wrong occurred more than six years prior to the filing of the complaint, and that the action is barred by the statute of limitations; (2) that the complaint fails to state a claim or cause of action upon which relief can be granted; and (3) that the complaint fails to allege facts sufficient to establish jurisdiction over the United States (R. 10-11).

The district court dismissed the complaint, expressing the view that the complaint did not present a case of a taking of property within the purview of the Fifth Amendment (R. 12-14). Upon appeal, the court of appeals pointed out that any consent previously granted in the Tucker Act or otherwise to sue the Government on a claim such as here asserted was expressly withdrawn by the Act of August 27, 1935, 49 Stat. 938, 939, 31 U.S.C. 773(b) (Pet. App. 11; R. 13). Accordingly, the

court of appeals did not reach either the question of limitations or the merits but affirmed, modifying the order of the district court so as to dismiss the the action for lack of jurisdiction (Pet. App. 12-13; R. 25).

ARGUMENT

1. Petitioner argues that she "is entitled to have the Supreme Court close the door and tell her why she can't settle a legitimate grievance in court under the broad jurisdictional grant of the Tucker Act" (Pet. 5). But this Court has already done so, as expressly pointed out by the court of appeals (Pet. App. 11-12; R. 23):

> It is axiomatic that: "Consent alone gives jurisdiction to adjudge against a sovereign." [*United States* v. *United States Fidelity Co.*, 309 U. S. 506, 514 (1940).] This is so, even in cases grounded upon alleged violations by the Government of Federal Constitutional rights. [*Schillinger* v. *United States*, 155 U. S. 163, 168 (1894).] And it is equally well settled that "the power to withdraw the privilege of suing the United States or its instrumentalities knows no limitations." [*Maricopa County* v. *Valley Bank*, 318 U. S. 357, 362 (1943).]

As the court of appeals also stated, it is "beyond question that in the complaint at bar appellant asserts a claim or cause of action arising out of an alleged 'surrender, requisition, seizure, or acquisition' by the Government of appellant's gold, and

'involving the effect or validity of . . . regulation[s] of the value of money'" (Pet. App. 11; R. 23). Since consent to sue the United States in such cases has been expressly withdrawn by the Congress (Act of August 27, 1935, 49 Stat. 938, 939, 31 U.S.C. 773(b)), jurisdiction is lacking and dismissal on that ground was eminently correct.[1]

There is no merit to petitioner's suggestion that the withdrawal statute applied only to gold "*in existence*" prior to the time when the Act went into effect and that the Act "was simply intended to prevent any further 'gold clause' cases" (Pet. 5). The Act itself, as well as the pertinent congressional reports, makes clear that the Act was applicable to just such a suit as this. The very section here involved contains the proviso "That this section shall not apply to any suit heretofore commenced or which may be commenced by January 1, 1936, * * *" (49 Stat. at p. 939, set out *supra*, pp. 2-3). By allowing suits for a period after the Act became law, the statute was obviously not limited to "gold *in existence*" (Pet. 5) but had prospective effect also. And in H. Rept. No. 1519, 74th Cong., 1st Sess., to accompany H. J. Res. 348, which was enacted as the Act of August 27, 1935, c. 780, sec. 2, 49 Stat. 938, 939, 31 U.S.C. 773(b), it is stated:

---

[1] The case of *Central Eureka Mining Co.* v. *United States*, — C. Cls. —, 138 F. Supp. 281 (C. Cls. No. 49468, decided February 20, 1956), cited by the petitioner (Pet. 4), is of no help to her. As shown in the opinion (p. 284), jurisdiction in that and the other cases there decided was by virtue of a special jurisdictional act. Act of July 14, 1952, 66 Stat. 605.

> This resolution removes the anomaly of the adoption by Congress of a fiscal policy or the exercise of its sovereign power to regulate money, followed by suits in its own courts for the purposes of having damages awarded, usually speculative, because of such policy or the exercise of such power. [2]

2. The "conflict" consideration governing review on certiorari refers to conflict between courts of appeal or with applicable decisions of this Court (Rule 19 of the Revised Rules of this Court) and not to any "conflict" between a district court and the reviewing court of appeals (cf. Pet. 6). In any event, there is no conflict between those courts. Both agree that dismissal of petitioner's complaint is required (Pet. App. 12; R. 13-14, 24-25). The court of appeals bases its dismissal on lack of jurisdiction while the district court is of the opinion that even if jurisdiction were present, the complaint does not present a case of taking of property within the purview of the Fifth Amendment.

---

[2] See also H. Rept. 1897, 74th Cong., 1st Sess., p. 3, in which the House managers spelled out in their statement filed with the conference report on the House Joint Resolution that even under a Senate amendment the withdrawal applies, *inter alia*, to coins or currencies of the United States and to claims and demands arising out of the surrender, requisition, seizure, or acquisition of any such coin or currency or of any gold or silver involving the effect of the validity of any change in the metallic content of the dollar or other regulation for the value of money.

Compare petitioner's assertion that the statute was merely "to prevent any further 'gold-clause' cases." (Pet. 5).

Neither view gives any support to the petitioner nor is the case one which "should be resolved by this Court." (Pet. 6).

3. While it is unnecessary to go beyond the jurisdictional point, which is conclusive, we point out additionally that the validity and constitutionality of the challenged laws and regulations [3] have long since been determined. *Perry* v. *United States*, 294 U. S. 330; *Uebersee Finanz-Korporation, etc.* v. *Rosen*, 83 F.2d 225 (C.A. 2), certiorari denied, 298 U. S. 679; *Bakewell* v. *United States*, 28 F. Supp. 504, 506 (E.D. Mo.), affirmed 110 F.2d 564 (C.A. 8), certiorari denied, 310 U. S. 638; *Ruffino* v. *United States*, 114 F.2d 696 (C.A. 9); *Farber* v. *United States*, 114 F.2d 5 (C.A. 9); *United States* v. *Levy*, 137 F.2d 778 (C.A. 2); *United States* v. *Chabot*, 193 F.2d 287, 288-289 (C.A. 2); *Campbell* v. *Chase Nat. Bank of City of New York*, 5 F. Supp. 156 (S.D. N.Y.), affirmed on jurisdictional grounds, 71 F.2d 669 (C.A. 2), certiorari denied, 293 U. S. 592.

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[3] The Gold Reserve Act of January 30, 1934, 48 Stat. 337, 12 U.S.C. 213; the Trading With the Enemy Act, as amended by the Emergency Banking Relief Act of March 9, 1933, 48 Stat. 1, 12 U.S.C. 95(a); Executive Order No. 6260, as amended, 12 U.S.C. following 95(a); and the United States Treasury Department Gold Regulations, 31 CFR, Part 54, as amended, 19 F.R. 4309-4316.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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